



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2015-0353, FRL- 9943-24-Region 10]

Approval and Promulgation of Implementation Plans; Alaska:

Updates to Incorporation by Reference and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve certain State Implementation Plan revisions submitted by Alaska on May 12, 2015. The revisions updated the incorporation by reference of certain Federal provisions, revised rules to reflect changes to Federal permitting requirements and the 2013 redesignation of the Mendenhall Valley area of Juneau, and made minor clarifications. We note that the May 12, 2015 submission also addressed transportation conformity and infrastructure requirements. These requirements are not being addressed in this action. We approved the transportation conformity revisions in a previous action on September 8, 2015 and we intend to address the infrastructure requirements in a separate, future action.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0353, at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from <http://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553-6357 or hall.kristin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or

“our” is used, it is intended to refer to the EPA.

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I. Background

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP is a state’s plan to implement, maintain and enforce the National Ambient Air Quality Standards (NAAQS) set by the EPA. Alaska’s air quality regulations are set forth at Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50).

Alaska regularly revises these and other rules to implement, maintain and enforce the standards.

We note that Alaska incorporates by reference portions of certain Federal regulations directly into the Alaska SIP. Alaska generally submits an annual update to the EPA to ensure that its rules stay consistent with Federal requirements. On May 12, 2015, Alaska submitted such an update, and included other revisions to account for changes to Federal permitting rules and the 2013 redesignation of the Mendenhall Valley area of Juneau. Alaska also included some minor rule clarifications and edits.

We note that the May 12, 2015 submission also addressed transportation conformity and infrastructure-related requirements. These requirements are not being addressed in this action.

We previously approved the transportation conformity revisions on September 8, 2015 (80 FR 53735). We intend to address the infrastructure requirements in a separate, future action.

II. Analysis of Rule Updates

Ambient Air Quality Standards – 18 AAC 50.010

In the *Ambient Air Quality Standards* rule section, Alaska revised paragraph (1)(A) to reference the appropriate Federal interpretation method for determining compliance with the 24-hour standard for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀). The interpretation method is specified at 40 CFR part 50, Appendix K, and Alaska incorporates this provision by reference into the Alaska SIP at 18 AAC 50.035(b). We are proposing to approve this revision.

We note that, consistent with our September 19, 2014 action, we are not approving paragraphs (7) and (8) of this section, which establish state ambient air quality standards for reduced sulfur compounds and ammonia (79 FR 56268). These are not NAAQS established under section 109 of the CAA and Alaska has not relied on these provisions to demonstrate attainment or maintenance of the NAAQS or to meet other specific requirements of section 110 of the CAA.

Air Quality Designations – 18 AAC 50.015

Alaska revised paragraphs (b)(2) and (e) of the *Air Quality Designations, Classifications, and Control Regions* rule section to reflect the redesignation of the Mendenhall Valley area of Juneau to attainment for the 24-hour PM₁₀ NAAQS. The EPA approved Alaska's maintenance plan and request to redesignate the area on May 9, 2013 (78 FR 27071). We are proposing to

approve the update to this rule section to reflect the redesignation.

Baseline Dates and Maximum Allowable Increases – 18 AAC 50.020

Alaska updated Table 2 in paragraph (a) of the *Baseline Dates and Maximum Allowable Increases* rule section to set the minor source baseline date for fine particulate matter (PM_{2.5}) for the Northern Alaska Intrastate Air Quality Control Region. This baseline date is calculated based on a trigger date set in Federal major source permitting regulations. The baseline date is calculated as the date on which the first complete Prevention of Significant Deterioration (PSD) permit application is received after the EPA trigger date – which for PM_{2.5} is October 20, 2011. For this region of Alaska, the minor source baseline date is November 2, 2012. Emission changes at sources after this date consume the PM_{2.5} PSD increment. We are proposing to approve this rule revision.

Documents, Procedures and Methods Adopted by Reference – 18 AAC 50.035

Alaska submitted revisions to paragraphs (a) and (b) of the *Documents, Procedures and Methods Adopted by Reference* rule section to include the *Quality Assurance Handbook for Air Pollutant Measurement Systems* and the Federal reference method for measuring carbon monoxide in ambient air. Alaska also repealed the section's reference to a Federal monitoring provision that was likewise repealed. The revisions update the incorporation by reference of specific Federal procedures and methods into the Alaska SIP, as of February 27, 2014. We are proposing to approve the submitted revisions.

We note that, consistent with our September 19, 2014 action, we are not approving paragraph (a)(6) of this rule section because the provision implements requirements of title V of

the CAA and not requirements of section 110 of title I of the CAA. We are also not approving paragraph (b)(4) which specifies test methods related to 40 CFR part 63 because it is not related to attainment or maintenance of the NAAQS or other specific requirements of section 110 of the CAA (79 FR 56268).

Federal Standards Adopted by Reference – 18 AAC 50.040

Alaska submitted revisions to paragraphs (f) and (h) of the *Federal Standards Adopted by Reference* rule section to update the citation dates for the adoption by reference of the Federal Guideline on Air Quality Models at paragraph (f) and the Federal PSD permitting requirements at paragraph (h). We are proposing to approve the changes to 18 AAC 50.040(f) and (h) because they update the Alaska SIP to reflect recent changes to Federal requirements, including the EPA's final rule to remove specific screening provisions from PSD regulations that were vacated by a court and subsequently repealed by the EPA, as discussed below.

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, among other things, vacated the provisions adding the PM_{2.5} Significant Monitoring Concentration (SMC) to the Federal regulations, at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), that were promulgated as part of the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule," (75 FR 64864, October 10, 2010) (2010 PSD PM_{2.5} Implementation Rule).

In its decision, the court held that the EPA did not have the authority to use SMCs to

exempt permit applicants from statutory requirements related to PSD. Although the PM_{2.5} SMC was not a required element of a state's PSD program, were a state PSD program that contains such a provision to rely on that provision to issue new permits without requiring ambient PM_{2.5} monitoring data, such application of the vacated SMC would be inconsistent with the court's opinion and the requirements of the CAA.

This decision also – at the EPA's request – vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM_{2.5} Implementation Rule that revised certain Federal regulations related to Significant Impact Levels (SILs) for PM_{2.5}. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM_{2.5}, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the Federal Register publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. The court's decision does not affect the PSD increments for PM_{2.5} promulgated as part of the 2010 PSD PM_{2.5} Implementation Rule.

The EPA amended its regulations to remove the vacated PM_{2.5} SILs and SMC provisions from PSD regulations on December 9, 2013 (78 FR 73698). In addition, the EPA is initiating a separate rulemaking regarding the PM_{2.5} SILs that will address the court's remand.

In the May 12, 2015 submission, Alaska updated the citation date for the incorporation by reference of Federal PSD permitting rules to December 9, 2013, to capture the EPA's removal of the vacated SILs and SMC provisions. In addition, Alaska submitted changes to the *Ambient Air*

Quality Analysis Methods rule section at 18 AAC 50.215 to address the court vacatur. These changes are discussed below. We are proposing to approve the changes to 18 AAC 50.040(h) and 18 AAC 50.215 as being consistent with the court decision and revised EPA regulations for the PM_{2.5} SMC and SILs.

Ambient Air Quality Analysis Methods – 18 AAC 50.215

Alaska revised paragraph (a)(3) of the *Ambient Air Quality Analysis Methods* rule section to include a reference to the *Quality Assurance Project Plan for the State of Alaska Air Monitoring and Quality Assurance Program* (QAPP) for meteorological data, as adopted by reference in 18 AAC 50.030. We are proposing to approve the revision because the EPA has reviewed and approved the QAPP through a separate quality assurance/quality control review process.

Alaska revised paragraph (d) of this section, intending to align the rule language with the explanation of when and how SILs should be used by permitting authorities that the EPA provided in the preamble to the Federal Register publication when the provisions were originally promulgated (October 20, 2010, 75 FR 64864). Alaska also updated the SILs table in paragraph (d), adding SILs for the annual and 24-hour PM_{2.5} NAAQS, and for 1-hour sulfur dioxide (SO₂) and nitrogen dioxide (NO₂) NAAQS. The SILs values in the table are consistent with the EPA's implementing regulations at 40 CFR 51.165(b) and the EPA's NO₂ and SO₂ guidance and recommended interim SILs for the 1-hour NO₂ and 1-hour SO₂ NAAQS. We are proposing to approve the revisions as being consistent with the January 22, 2013, court decision vacating the PM_{2.5} SILs and SMC discussed above.

Consistent with our previous actions on the Alaska SIP, the EPA is proposing not to approve paragraph (a)(4), which authorizes the Alaska Department of Environmental Conservation to approve any alternative method that it determines is “representative, accurate, verifiable, capable of replication.” In essence, this subparagraph allows the department to modify requirements relied on to attain and maintain the NAAQS without a SIP revision. For additional discussion, please see the technical support documents for our previous actions on September 19, 2014 (79 FR 56268) and on August 14, 2007 (72 FR 45378). See also 78 FR 12460, 12485-86 (Feb. 22, 2013).

III. Proposed Action

We are proposing to approve and incorporate by reference into the Alaska SIP the following revised provisions, state effective April 17, 2015:

- 18 AAC 50.010 Ambient Air Quality Standards, except paragraphs (7) and (8);
- 18 AAC 50.015 Air Quality Designations, Classifications, and Control Regions;
- 18 AAC 50.020 Baseline Dates and Maximum Allowable Increases;
- 18 AAC 50.035 Documents, Procedures and Methods Adopted by Reference, except paragraphs (a)(6) and (b)(4);
- 18 AAC 50.040 Federal Standards Adopted by Reference, except (a), (b), (c), (d), (e), (g), (i), (j), and (k); and
- 18 AAC 50.215 Ambient Air Quality Analysis Methods, except (a)(4).

We note that we previously approved the submitted rule revisions related to transportation conformity at 18 AAC 50.700 through 18 AAC 50.750 and 18 AAC 50.990 on

September 8, 2015 (80 FR 53735).

IV. Incorporation by Reference

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section VI. Proposed Action.

The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 17, 2016.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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